

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT A. GIBBS,  
Plaintiff,

v.

JEFF JENS, et al.,  
Defendants.

AND RELATED CASES

No. 2:20-cv-01956-DAD-DMC (PS)  
No. 2:20-cv-01957-DAD-DMC (PS)  
No. 2:20-cv-01961-DAD-DMC (PS)  
No. 2:22-cv-00299-DAD-DMC (PS)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
ACTIONS WITH PREJUDICE AS *HECK*-  
BARRED

(Doc. No. 35)

Plaintiff Robert A. Gibbs is proceeding *pro se* and *in forma pauperis* in the above-captioned civil actions filed pursuant to 42 U.S.C. § 1983. These actions have been related within the meaning of Eastern District of California Local Rule 123(a). (Doc. No. 34.) This matter was referred to a United States Magistrate Judge pursuant to Local Rule 302.

On June 8, 2022, the assigned magistrate judge issued findings and recommendations, recommending that all four related actions be dismissed with prejudice as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (Doc. No. 35 at 8–9.) The magistrate judge considered the defendants’ *Heck* arguments made in their motions to dismiss filed in *Gibbs v. Jens, et al. (Gibbs I)*, No. 2:20-cv-01956-DAD-DMC; *Gibbs v. Northam, et al. (Gibbs II)*, No. 2:20-cv-01957-DAD-DMC; and *Gibbs v. Bridgett, et al. (Gibbs III)*, No. 2:20-cv-01961-DAD-DMC. (*Id.* at 6–9.) The

1 magistrate judge also considered the applicability of *Heck* to *Gibbs v. State of California, et al.*  
2 (*Gibbs IV*), No. 2:22-cv-00299-DAD-DMC, while screening plaintiff’s complaint in *Gibbs IV*  
3 pursuant to 28 U.S.C. §1915(e)(2). (*Id.* at 9.) The findings and recommendations conclude that  
4 *Heck* bars all four of plaintiff’s cases because all four complaints “challenge the fact of an  
5 underlying conviction” and allege facts that “if true, would necessarily imply the invalidity of a  
6 state court criminal conviction as to which Plaintiff has not obtained a favorable termination.”  
7 (*Id.* at 8.) The magistrate judge also concluded that plaintiff’s claims were not barred by the  
8 statute of limitations, failed to state a claim as to defendant Conflict Defender in *Gibbs I* due to  
9 lack of specific allegations as to that defendant, and declined to consider whether plaintiff’s  
10 complaints sufficiently pled facts to establish municipal liability because the cases are *Heck*-  
11 barred. (*Id.* at 13–15.) The findings and recommendations were served on all parties and  
12 contained notice that any objections thereto were to be filed within fourteen (14) days of service.  
13 (*Id.* at 16.) Plaintiff filed timely objections. (Doc. No. 37.)

14 In his objections, plaintiff argues that the inclusion of *Gibbs IV* in the findings and  
15 recommendations “deprives this plaintiff of due process” because it “was subject to no motion  
16 before the court, involves the state of California and not local (Shasta County) actors and involves  
17 issues of overall constitutionality.” (*Id.* at 1.) Plaintiff contends that to apply *Heck* to a challenge  
18 to the constitutionality of a state statute as he purports to do in *Gibbs IV* would be overbroad.  
19 (*Id.*) Plaintiff continues on to reiterate his arguments that the California statute at issue in *Gibbs*  
20 *IV*, California Penal Code § 422, is unconstitutional. (*Id.* at 2–6.) Plaintiff also objects to  
21 dismissal of his actions with prejudice, arguing that his petition for writ of habeas corpus is  
22 currently pending “and, if successful, will remove the ‘*Heck*’ bar” and permit him to refile the  
23 complaints in the above-captioned actions. (*Id.* at 6.)

24 The undersigned finds plaintiff’s objections to be unpersuasive. First, magistrate judges  
25 are required to screen complaints in actions proceeding *in forma pauperis* and “shall dismiss the  
26 case at any time if the court determines that . . . the action . . . fails to state a claim on which relief  
27 may be granted.” 28 U.S.C. §1915(e)(2). While the assigned magistrate judge could have  
28 issuance separate findings and recommendations screening the complaint in *Gibbs IV*, such

1 separate issuance was neither required nor judicially efficient, given the consideration of *Heck* in  
2 all four related matters. As to plaintiff's argument about the applicability of *Heck* to  
3 constitutional challenges to a state statute, the Supreme Court held the following in *Heck*:

4 [I]n order to recover damages for allegedly unconstitutional  
5 conviction or imprisonment, or for other harm caused by actions  
6 whose unlawfulness would render a conviction or sentence invalid,<sup>6</sup>  
7 a § 1983 plaintiff must prove that the conviction or sentence has been  
8 reversed on direct appeal, expunged by executive order, declared  
9 invalid by a state tribunal authorized to make such determination, or  
10 called into question by a federal court's issuance of a writ of habeas  
11 corpus, 28 U.S.C. § 2254. A claim for damages bearing that  
12 relationship to a conviction or sentence that has not been so  
invalidated is not cognizable under § 1983. Thus, when a state  
prisoner seeks damages in a § 1983 suit, the district court must  
consider whether a judgment in favor of the plaintiff would  
necessarily imply the invalidity of his conviction or sentence; if it  
would, the complaint must be dismissed unless the plaintiff can  
demonstrate that the conviction or sentence has already been  
invalidated.

13 *Heck*, 512 U.S. at 486–87. In *Gibbs IV*, plaintiff alleges that California Penal Code § 422 was  
14 unconstitutionally mis-applied in his case and is “overall unconstitutional for several reasons” and  
15 seeks damages for the alleged harm of his conviction and sentence. (Doc. No. 1 at 5–6, *Gibbs*  
16 *IV*.) As the magistrate judge found, a judgment in favor of plaintiff in *Gibbs IV* “that California  
17 Penal Code § 422 is unconstitutional as it was applied in his state court criminal case also implies  
18 the invalidity of [p]laintiff's state court conviction for violating that statute” precisely in the  
19 manner barred by *Heck*. *Heck*, 512 U.S. at 487. Plaintiff's arguments to the contrary are  
20 unpersuasive. Finally, the undersigned agrees with the magistrate judge that because amendment  
21 of plaintiff's claims in the four related cases captioned above would be futile due to the  
22 application of *Heck*, dismissal without prejudice is proper here. If plaintiff were to succeed in his  
23 pending petition for writ of habeas corpus and invalidate his conviction such that *Heck* no longer  
24 applies, he may file new claims as appropriate.

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
26 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
27 including plaintiff's objections, the court finds the findings and recommendations to be supported  
28 by the record and proper analysis.

Accordingly,

1. The findings and recommendations issued on June 8, 2022 (Doc. No. 35) are adopted in full;
2. As to *Gibbs I* (No. 2:20-cv-01956-DAD-DMC):
  - a. Defendants' requests for judicial notice (Doc. No. 10, 11-2) are granted;
  - b. Defendants' motions to dismiss (Doc. Nos. 9, 11) are granted in part and denied in part; and
  - c. This action is dismissed in its entirety with prejudice as *Heck*-barred.
3. As to *Gibbs II* (No 2:20-cv-01957-DAD-DMC):
  - a. Defendant's request for judicial notice (Doc. No. 12) is granted;
  - b. Defendant's motion to dismiss (Doc. No. 11) is granted in part and denied in part; and
  - c. This action is dismissed in its entirety with prejudice as *Heck*-barred.
4. As to *Gibbs III* (No 2:20-cv-01961-DAD-DMC):
  - a. Defendants' request for judicial notice (Doc. No. 14) is granted;
  - b. Defendants' motion to dismiss (Doc. No. 13) is granted in part and denied in part; and
  - c. This action is dismissed in its entirety with prejudice as *Heck*-barred.
5. As to *Gibbs IV* (No 2:20-cv-00299-DAD-DMC):
  - a. This action is dismissed in its entirety with prejudice as *Heck*-barred.
6. The Clerk of Court is directed to close the above-captioned cases.

IT IS SO ORDERED.

Dated: September 2, 2022

  
UNITED STATES DISTRICT JUDGE